IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 22ND NOVEMBER 2006 / 1ST AGRAHAYANA 1928

Crl.MC.No. 3557 of 2005(D)

SC.73/2005 of ADDL. SESSIONS COURT (ADHOC), PATHANAMTHITTA
.....

PETITIONER: ACCUSED.

SUJITH, AGED 31 YEARS, S/O.VIJAYAN,
SILPA HOUSE, KADAMBANADU VILLAGE, ADOOR,
PATHANAMTHITTA DISTRICT.

BY ADV. SRI.C.C.THOMAS

RESPONDENTS: COMPLAINANT.

STATE OF KERALA, REP. BY THE SUB
INSPECTOR OF POLICE, ADOOR POLICE STATION,
PATHANAMTHITTA DISTRICT, BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.K.A. AKBAR.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 22/11/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

CRL.M.C.NO. 3557 OF 2005

Dated this the 22nd day of November, 2006

ORDER

The petitioner is the 3rd accused in S.C.No.73/05 before the Additional Sessions Judge, Fast Track Court No.I, Pathanamthitta. Along with the co-accused, he faces allegations, inter alia, under Sec.55(a) of the Kerala Abkari Act. Cognizance was taken by the learned Magistrate on the basis of a final report submitted by the police. The case has been committed to the Court of Session. The matter is pending before the Additional Sessions Court. The petitioner has entered appearance.

2. The prayer, in this Crl.M.C., is that the proceedings against the petitioner may be quashed.

3. The contention raised by the petitioner is that he has no conscious or contumacious possession of the contraband article allegedly recovered from a house. Inasmuch as he has no such conscious and contumacious possession, no charge is liable to be framed against the petitioner. This, in short, is the contention.

4. I am of opinion that the said question must be left to the learned Sessions Judge to be considered at the stage of Sec.227/228 of the Cr.P.C. This Court cannot in every case take over the work of the Sessions Judge who must consider all the materials relied on by the prosecution and decide whether charge is liable to be framed against the indictee under Sec.227/228 of the Cr.P.C. It is for the learned Sessions Judge in every case to apply his mind to the relevant materials placed before him and consider whether charges are liable to be framed under Sec.228 of the Cr.P.C. or whether the accused is entitled to be discharged under Sec.227 of the Cr.P.C. In an exceptional case, of course, the fact that the accused has such remedy under the Code will not disentitle this Court to invoke the powers under Sec.482 of the Cr.P.C. But that course can be resorted only in an exceptional case. The same cannot be the daily bread of this Court. I do not find any compelling reasons in this case why the normal procedure contemplated under the Code must be short circuited by this Court undertaking an elaborate consideration of all the materials which the prosecution chooses to rely on in an attempt to drive home the charge against the petitioner.

5. This Crl.M.C. is, in these circumstances, dismissed; but with the specific observation that the learned Sessions Judge must consider the petitioner's claim for discharge at the stage of Sec.227/228 of the Cr.P.C. The same has got to be done expeditiously and the petitioner should not be compelled to continue on the array of parties unnecessarily if he is entitled for a discharge on the basis of the materials available.

Sd/-

(R. BASANT, JUDGE)

Nan/

//true copy//

P.S. to Judge